

IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE
TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

JOHN NEWTON FORD,

Petitioner,

v.

TENNESSEE INSURANCE DIVISION,

Respondent.

DOCKET NO. 07-1473-IV

NOTICE OF ENTRY
REQUESTED

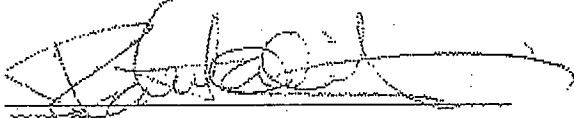
DAVIDSON COUNTY CHANCERY COURT

2007 OCT 19 PM 2:52

ORDER WITHDRAWING RESPONDENT'S PETITION FOR JUDICIAL
REVIEW PURSUANT TO T.C.A. § 4-5-322(b)(1)(B)(iii)


THIS CAUSE CAME TO BE HEARD upon the initial Petition for Judicial Review of the decision of the Administrative Law Judge in this matter, proper notice to all parties and the Motion of the Respondent to have the Petition for Judicial Review of the decision of the Administrative Law Judge withdrawn, and the decision of the Administrative Law Judge to become final, therein revoking the insurance license of John Newton Ford, to which the Court accepts and agrees.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Petition for Withdrawal for Judicial Review of the decision of the Administrative Law Judge is hereby granted. The decision of the Administrative Law Judge revoking the insurance license of John Newton Ford by the State of Tennessee, Department of Commerce and Insurance is hereby adjudged final.


JUDGE

DATE

APPROVED:



JULIAN T. BOLTON, ESQ. (#015378)


Attorney For Respondent

The Law Office of Julian T. Bolton

81 Monroe Avenue, Suite 400

Memphis, Tennessee 38103

(901) 507-2521



SARAH ANN HIESTAND, ESQ. (14217)

Senior Counsel, Financial Division

Tennessee Attorney General's Office

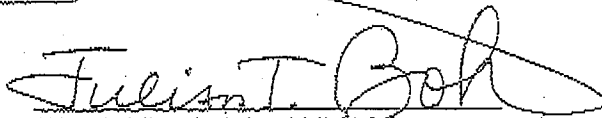
P.O. Box 20207

Nashville, TN 37202-0207

(615) 741-6035

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above and foregoing pleading has been sent via First Class U.S. Mail, postage prepaid, to all interested parties and attorneys on this the 12th day of October, 2007.



JULIAN T. BOLTON, ESQ.



State of Tennessee
Department of State
Administrative Procedures Division
312 Eighth Avenue North
8th Floor, William R. Snodgrass Tower
Nashville, Tennessee 37243
Phone: (615) 741-7008/Fax: (615) 741-4472

FEB 20 2007

LESLIE SCHecter NEWMAN
DEPT OF COMMERCE & INSURANCE

February 20, 2007

Commissioner Leslie Schecter Newman
TN Dept. of Commerce & Insurance
5th Floor, Davy Crockett Tower
500 James Robertson Parkway
Nashville, Tennessee 37243-5065

Mary G. Moody
Dept of Commerce & Insurance
12th Floor, Davy Crockett Tower
500 James Robertson Parkway
Nashville, TN 37243

Julian T. Bolton
Law Office of Julian T. Bolton
81 Monroe Avenue, Suite 400
Memphis, TN 38103

RE: In the Matter of: John Ford

Docket No. 12.01-092217J

Dear Parties:

Please find enclosed a copy of the Initial Order rendered in connection with the above-styled case.

Sincerely,

Charles C. Sullivan, II
Administrative Procedures Division

/ncp
Enclosure

BEFORE THE COMMISSIONER OF THE TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE

IN THE MATTER OF:

JOHN NEWTON FORD

DOCKET NO.: 12.01-092217J

ORDER

THIS ORDER IS AN INITIAL ORDER RENDERED BY AN ADMINISTRATIVE JUDGE WITH THE ADMINISTRATIVE PROCEDURES DIVISION.

THE INITIAL ORDER IS NOT A FINAL ORDER BUT SHALL BECOME A FINAL ORDER UNLESS:

1. THE ENROLLEE FILES A WRITTEN APPEAL, OR EITHER PARTY FILES A PETITION FOR RECONSIDERATION WITH THE ADMINISTRATIVE PROCEDURES DIVISION NO LATER THAN March 7, 2007.

YOU MUST FILE THE APPEAL, PETITION FOR RECONSIDERATION WITH THE ADMINISTRATIVE PROCEDURES DIVISION. THE ADDRESS OF THE ADMINISTRATIVE PROCEDURES DIVISION IS:

SECRETARY OF STATE
ADMINISTRATIVE PROCEDURES DIVISION
WILLIAM R. SNODGRASS TOWER
312 EIGHTH AVENUE NORTH, 8th FLOOR
NASHVILLE, TENNESSEE 37243-0307

IF YOU HAVE ANY FURTHER QUESTIONS, PLEASE CALL THE ADMINISTRATIVE PROCEDURES DIVISION, 615/741-7008 OR 741-5042, FAX 615/741-4472. PLEASE CONSULT APPENDIX A AFFIXED TO THE INITIAL ORDER FOR NOTICE OF APPEAL PROCEDURES.

BEFORE THE COMMISSIONER OF THE DEPARTMENT OF COMMERCE AND
INSURANCE FOR THE STATE OF TENNESSEE

TENNESSEE INSURANCE DIVISION,
Petitioner,

vs.

JOHN NEWTON FORD,
Respondent.

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) Docket No.: 12.01-092217J
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INITIAL ORDER

This matter came to be heard on August 15, 2006, before Marion Wall, an Administrative Judge assigned to the Secretary of State, Administrative Procedures Division, and sitting for the Commissioner of the Tennessee Department of Commerce and Insurance in Nashville, Tennessee. Mary G. Moody, General Counsel for the Insurance Division, and Jennifer L. Smith, Staff Attorney, represented the Division. Julian T. Bolton and Drayton D. Berkley, of Memphis, Tennessee, represented the Respondent, John Newton Ford. The last briefs in this matter were filed on November 8, 2006, and the last pleading on January 16, 2007.

This issue in this hearing was whether the Respondent's insurance producer's license should be disciplined for alleged violations of Tenn. Code Ann. § 56-6-112(a)(8) and Tenn. Code Ann. § 56-6-112(a)(2). After consideration of the entire record and the arguments of the parties, it is determined that the State has not shown by a preponderance of the evidence that the Respondent violated the provisions of Tenn. Code Ann. § 56-6-112(a)(8) (fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this State or elsewhere), but that it has shown by a preponderance of the evidence that the Respondent has violated the provisions of Tenn. Code Ann. § 56-6-112(a)(2) (violation of any law). Considering the gravity of the violation, which is a

finding of fraud involving misapplication of funds, it is concluded that REVOCATION of Respondent's insurance producer license is the appropriate sanction. This determination is based upon the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Respondent John Ford has served for many years as a Senator in the Tennessee Legislature.

1. On February 2, 2004, Respondent filed, with the Registry of Election Finance (Registry), his 2003 supplemental annual campaign financial disclosure statement, covering the period January 1, 2003 through December 31, 2003.

2. Respondent's supplemental annual campaign financial disclosure statement disclosed an expenditure to the Peabody Hotel Downtown, in Memphis, in the amount of two thousand five hundred dollars (\$2,500) with the purpose of the expenditure listed as Reception and Professional Services.

3. Respondent's 2003 supplemental annual campaign financial disclosure statement disclosed an expenditure to the Peabody Hotel Downtown in the amount of one thousand five hundred dollars (\$1,500) with the purpose of the expenditure listed as Professional Services Entertainment Expense.

4. Respondent's 2003 supplemental annual campaign financial disclosure statement disclosed an expenditure to the Peabody Hotel Downtown in the amount of five thousand dollars (\$5,000) with the purpose of the expenditure listed as Professional Services-Entertainment Expense.

5. Respondent's 2003 supplemental annual campaign financial disclosure statement disclosed an expenditure to Awesome Videos in the amount of eight hundred seventy-five dollars (\$875) with the purpose of the expenditure listed as Professional Services.

6. Respondent's 2003 supplemental annual campaign financial disclosure statement disclosed an expenditure to Larry Dodson in the amount of one thousand five hundred dollars (\$1,500) with the purpose of the expenditure listed as Entertainment Expense.

7. Respondent's 2003 supplemental annual campaign financial disclosure statement disclosed an expenditure to Grand Rentals in the amount of one thousand nine hundred forty-five dollars (\$1,945) with the purpose of the expenditure listed as Entertainment Expense.

8. Respondent's 2003 supplemental annual campaign financial disclosure statement disclosed an expenditure to Holliday Flowers, Inc., in the amount of two thousand dollars (\$2,000) with the purpose of the expenditure listed as Entertainment Expense.

9. The purpose of the expenditures to the Peabody Hotel, Awesome Videos, Larry Dodson, Grand Rentals and Holliday Flowers, Inc., was to pay for expenses associated with Respondent's daughter's wedding reception.

10. At the Registry's March 17, 2005 meeting, the Registry determined that based upon the omission of facts the expenditures associated with Respondent's daughter's wedding reception, which were listed on Respondent's 2003 supplemental annual campaign financial disclosure statement, there was a sufficient showing of fraud for the Registry to consider action concerning the non-political use of campaign funds, pursuant to Tenn. Code Ann. § 2-10-206(a)(4). Since the filing had been on file for more than 180 days, actually some 13 months, it would otherwise be deemed sufficient, by law, absent a showing of fraud.

11. On April 5, 2005, the Registry issued an Order of Notice of Registry's Intent to Assess Civil Penalties and to provide Opportunity for Informal Show Cause Hearing to Senator John Ford. This order provided an opportunity for Respondent to personally appear before the Registry at its May 11, 2005 meeting for an informal hearing as to why the Registry should not assess civil penalties against him. In the alternative to personally appearing before the Registry, Respondent was provided an opportunity to submit a sworn statement, along with any pertinent attachments, as an explanation as to why civil penalties should not be assessed against him.

12. Respondent did not personally appear at the Registry's May 11, 2005, meeting, but was represented by his attorney, Ed Yarbrough. Mr. Yarbrough presented the Registry with a sworn affidavit from Respondent. Respondent explained in his affidavit that over 100 of his constituents were invited to his daughter's wedding reception and therefore he considered the reception to be a political event. In addition, Respondent stated that approximately one-third of the attendees at his daughter's wedding reception were constituents while only one-sixth of the reception expenses were paid with campaign funds.

13. The Registry found that by spending campaign funds for a non-political purpose, Respondent violated Tenn. Code Ann. § 2-10-114(b) of Tennessee's Campaign Financial Disclosure Law:

Except as provided in subsection (a), no candidate shall use any campaign funds either prior to, during or after an election for such candidates' own personal financial benefit or any other non-political purpose as defined by federal internal revenue code. A violation of this subsection is a class 2 (two) offense as defined in T.C.A. §2-10-110(a)(2).

14. Pursuant to its authority under Tenn. Code Ann. § 2-10-110(a)(2), and after consideration of the Registry's records in the case, the Registry issued assessments to

Respondent. Respondent was assessed a class two (2) civil penalty of ten thousand dollars (\$10,000) to be paid to the Registry within thirty (30) days of the issuance of the order. The Registry noted that this action involved "an indication of fraud¹." (emphasis supplied).

16. The Commissioner did not present any testimony.

17. There is no evidence in this record of the type of license held by Respondent, nor of the length of time this license has been held. There is no record of any prior discipline or any problems or complaints in the conduct of insurance business over the length of the license.

CONCLUSIONS OF LAW

1. The Tennessee Insurance Law, as amended, Tenn. Code Ann. Title 56, (hereinafter referred to as the "Law") places the responsibility for the administration of the Law on the Commissioner of Commerce and Insurance (hereinafter referred to as the "Commissioner"). Tenn. Code Ann. §§ 56-1-202 & 56-6-155. The Division is the lawful agent through which the Commissioner discharges this responsibility.

2. Tenn. Code Ann. § 56-6-112(a)(8) provides that the Commissioner may place on probation, suspend, revoke, or refuse to issue or renew any insurance producer license upon finding that the insurance producer or applicant was using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this State or elsewhere.

3. Tenn. Code Ann. § 56-6-112(a)(2) provides that the Commissioner may place on probation, suspend, revoke, or refuse to issue or renew any insurance producer license upon finding that the insurance producer or applicant violated any law, rule, regulation, subpoena or order of the Commissioner or of another state's commissioner.

¹ It is noted that the filings had been filed more than 180 days prior to the Registry's consideration of the matter. By law, the Registry could not have considered the matter absent a showing of fraud. Tenn. Code Ann. § 2-10-206(a)(4).

4. Commissioner is defined as the Commissioner of the Tennessee Department of Commerce and Insurance. Tenn. Code Ann. § 56-1-102(2).

5. The State has the burden of proof in this matter by a preponderance of the evidence.

6. Because the State has not met its burden of proof by a preponderance of the evidence that Respondent was untrustworthy or financially irresponsible and demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this State or elsewhere, the State has not shown a violation of Tenn. Code Ann. § 56-6-112(a)(8).

The State urges that Respondent "demonstrated untrustworthiness and/or financial irresponsibility in the conduct of his business of politics in this state when he misapplied funds entrusted to him for campaign expenses to pay for his personal expenses related to his daughter's wedding reception." (emphasis supplied) The holding of elected public office in the State of Tennessee is not a "business."

7. The term "business" is not defined in the statute². According to Black's Law Dictionary (Rev. 4th Ed.), "The term 'business' has no definite or legal meaning." Webster's On-Line Dictionary, in the only definition that seems to apply, defines business as "a usually commercial or mercantile activity engaged in as a means of livelihood: TRADE, LINE <in the restaurant *business*> b : a commercial or sometimes an industrial enterprise; *also* : such enterprises <the *business* district> c : dealings or transactions especially of an economic nature".

² The Respondent cites a provision of the Revised Uniform Partnership Act defining business as "every trade, occupation, and profession and any other activity, including the holding or ownership of property, entered into for profit" [Tenn. Code Ann. §61-1-101(1)]. It is noted that the definition governs partnerships, which are defined as "an association of two or more persons to carry on as co-owners of a business or other undertaking for profit." Tenn. Code Ann. § 61-1-101(6). Partnership law seems of little utility in deciding a question relating to elected public office. Oddly enough, the Uniform Commercial Code does not define "business," nor do the banking laws. Title 62 of the Tennessee Code, which governs "Professions, Businesses, and Trade" regulating all kinds of activities from architects and accountants to tattoo parlors, provides no definition of the term, either. We are left with the natural and ordinary meaning of the term.

Thus, the term, as it is generally understood, implies a commercial aspect. The holding of elected public office does not seem to properly fall within this definition.

8. While there is no proof in the record that Respondent has violated **any rule, regulation, subpoena, or order of the Commissioner of the Tennessee Department of Insurance or the Commissioner of any other state's Department of Insurance**, there is undisputed evidence that the Respondent was found to have violated the election finance laws.

The question therefore becomes whether violation of these laws is within the scope of that part of the statute allowing discipline of a license for violation of **any law, rule, regulation, subpoena, or order of the Commissioner of the Tennessee Department of Insurance or the Commissioner of any other state's Department of Insurance**. (emphasis supplied above)

Tenn. Code Ann. § 56-6-112(a)(2) The parties dispute whether the statute means to subject licenses to discipline for a violation of a law of the Commissioner, that is, an insurance law, or the much broader interpretation of any law at all, insurance or otherwise.

9. The predecessor statute to the above provided for discipline of a license for "violating, or failing to comply with, any insurance laws, or any lawful rule or order of the commissioner or of a commissioner of another state."

10. The legislature, in adopting the Tennessee Insurance Producer Licensing Act of 2002, omitted the word "insurance," leaving only the word "law." A change in the language of the statute indicates that a departure from the old language was intended. *Lavin v. Jordan*, 16 S.W. 3d 362, 365 (Tenn. 2000). Thus, it would seem that the Legislature intended to subject licenses to discipline for a much broader category of offenses. This comports with the general understanding that a "law" is a legislative act, as opposed to a "law of the Commissioner," when, of course, the Commissioner only has authority to adopt regulations in conformity with the

statutes promulgated by the Legislature. Furthermore, a review of the legislative history of the 2002 Act, makes clear that the Legislature was amending the statute to bring Tennessee into harmony with the federal Financial Services Modernization Act [Gramm-Leach-Bliley Act]. This act amended the restrictions of the Glass-Steagall Act, and one of its main thrusts was to allow banks to operate in some areas previously denied them, specifically areas touching on insurance matters, and to preempt state laws interfering with affiliations in such areas. Inasmuch as this Act allowed institutions other than insurance companies to participate in insurance businesses, it logically follows that in amending the Tennessee statute to allow discipline for violations of laws other than insurance laws, the Legislature sought to extend protection to the consumer with regard to these new participants writing insurance in the Tennessee market.

11. Thus, from the plain language, the presumption that amending the language of the statute meant the amending of the meaning of the language, and the reasons for the adoption of the statute by the Legislature and the purposes which can logically be gleaned by the legislative history, it seems clear that the Legislature intended to subject insurance licenses to discipline for violation of "any law," or, as the State urges in its brief "any law enacted by a legislative body."

12. Finding that the statute allows discipline of a license for violation of any law, and finding that Respondent violated the campaign finance laws, as determined by the Registry, the question remains of what is the appropriate action to be taken for such violation of that law. The State urges the seriousness of the underlying offense should determine the severity of the sanction, with which the undersigned agrees.


13. It would normally seem that a violation of the campaign finance laws would not have much relationship to the protection of the insurance buying public. It is, after all, the primary thrust of the statute to protect the public of Tennessee from improper practices in the

insurance business. Clearly, some laws have such little relationship to the insurance business that the violation of these laws could not serve as a basis for action against an insurance producer's license. The arcana of campaign finance laws relating to the listing of donors, what is or is not an in-kind contribution, and other such concerns would seem to give rise to little that would present any realistic threat to the insurance buying public. Here, however, the Registry found that Respondent had committed fraud. Specifically, it found misapplication of funds contributed to Respondent for political purposes being misapplied and diverted to private, personal matters. It found fraud in the listing of these expenses as political expenses; it could not have considered the question at all without the determination of fraud since the filing listing these expenses would otherwise have been deemed sufficient, by law. See, fn 1, *supra*.

14. The business of insurance involves the entrustment of funds to licensees for application to specific purposes. The finding of the Registry goes to an integral part of the business; it is not a failure to list a donor or a contribution, it is a misapplication of funds. It is further a determination that fraud was committed in the reporting of these expenditures as legitimate political expenditures. As such, these findings represent a threat to the insurance buying public, and revocation is the appropriate sanction.

15. It is therefore **ORDERED** that the Respondent's insurance producer license be, and hereby is, **REVOKED**.

This Initial Order entered and effective this 20 day of Feb, 2007.



Marion P. Wall
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this

20 day of Feb, 2007.

A handwritten signature in dark ink, appearing to read "Charles C. Sullivan, II", written over a horizontal line.

Charles C. Sullivan, II, Director
Administrative Procedures Division

APPENDIX A TO INITIAL ORDER NOTICE OF APPEAL PROCEDURES

Review of Initial Order

This Initial Order shall become a Final Order (reviewable as set forth below) fifteen (15) days after the entry date of this Initial Order, unless either or both of the following actions are taken:

(1) A party files a petition for appeal to the agency, stating the basis of the appeal, or the agency on its own motion gives written notice of its intention to review the Initial Order, within fifteen (15) days after the entry date of the Initial Order. If either of these actions occurs, there is no Final Order until review by the agency and entry of a new Final Order or adoption and entry of the Initial Order, in whole or in part, as the Final Order. A petition for appeal to the agency must be filed within the proper time period with the Administrative Procedures Division of the Office of the Secretary of State, 8th Floor, William R. Snodgrass Tower, 312 Eighth Avenue N., Nashville, Tennessee, 37243. (Telephone No. (615) 741-7008). See Tennessee Code Annotated, Section (T.C.A. §) 4-5-315, on review of initial orders by the agency.

(2) A party files a petition for reconsideration of this Initial Order, stating the specific reasons why the Initial Order was in error within fifteen (15) days after the entry date of the Initial Order. This petition must be filed with the Administrative Procedures Division at the above address. A petition for reconsideration is deemed denied if no action is taken within twenty (20) days of filing. A new fifteen (15) day period for the filing of an appeal to the agency (as set forth in paragraph (1) above) starts to run from the entry date of an order disposing of a petition for reconsideration, or from the twentieth day after filing of the petition, if no order is issued. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Initial Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

Review of Final Order

Within fifteen (15) days after the Initial Order becomes a Final Order, a party may file a petition for reconsideration of the Final Order, in which petitioner shall state the specific reasons why the Initial Order was in error. If no action is taken within twenty (20) days of filing of the petition, it is deemed denied. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Final Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

YOU WILL NOT RECEIVE FURTHER NOTICE OF THE INITIAL ORDER BECOMING A FINAL ORDER

A person who is aggrieved by a final decision in a contested case may seek judicial review of the Final Order by filing a petition for review in a Chancery Court having jurisdiction (generally, Davidson County Chancery Court) within sixty (60) days after the entry date of a Final Order or, if a petition for reconsideration is granted, within sixty (60) days of the entry date of the Final Order disposing of the petition. (However, the filing of a petition for reconsideration does not itself act to extend the sixty day period, if the petition is not granted.) A reviewing court also may order a stay of the Final Order upon appropriate terms. See T.C.A. §4-5-322 and §4-5-317.